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CAMERON E. BURKE  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

AHMAD GOLRANGI,

Plaintiff,

vs.

ROMAR ELECTRIC, INC., and  
McALVAIN CONSTRUCTION, INC.

Defendants.

Case No: CIV 04-225-S-BLW

MEMORANDUM IN SUPPORT  
OF OBJECTION TO RULE 56(f)  
F.R.C.P. MOTION

Defendant McAlvain Construction Co., Inc., has filed its Objection to Plaintiff's Rule 56, FRCP, Motion to continue this Defendant's Motion for Summary Judgment.

**I. RULE 56, F.R.C.P., MOTION**

Rule 56(f) provides as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

In this case, the Plaintiff has filed no affidavit stating reasons he cannot present facts essential to justify his opposition to Defendant's Motion for Summary Judgment.

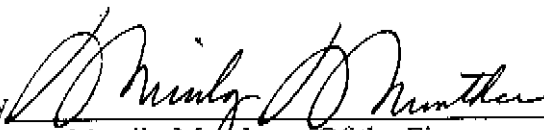
Moreover, Plaintiff has made no effort to undertake discovery in this matter, and has not complied with other requirements, including the filing of a litigation plan and the disclosure of witnesses.

It appears to this Defendant that Plaintiff is trying to delay responding to the pending Motion for Summary Judgment in the hope that the scheduled Settlement Conference on October 21, 2004, will make his response unnecessary. Defendant submits this is not an appropriate use of Rule 56(f), F.R.C.P., and respectfully requests the Court to refuse to grant the open-ended continuance of the hearing on Defendant's motion.

This Defendant does not object to the allowance of additional time for Plaintiff's response to the motion to be filed if Plaintiff believes depositions are required in order to do so. However, Plaintiff's delay in undertaking discovery should be considered and only the time for his response, if anything, should be postponed. Defendant strenuously objects to the continuance of the hearing on its motion.

Dated this 12<sup>th</sup> day of October, 2004.

PENLAND MUNTHER GOODRUM, CHTD.

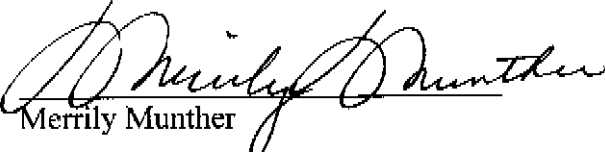
By   
Merrily Munther - Of the Firm

### CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 12<sup>th</sup> day of October, 2004, caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

Chris Kronberg, Esq.  
Bowen & Bailey, LLP  
P.O. Box 1007  
Boise, Idaho 83701-1007

Hand Delivery	<u>          </u>
U.S. Mail	<u>  X  </u>
Facsimile	<u>          </u>
Overnight Mail	<u>          </u>

  
Merrily Munther